GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Public Services - Commercial Taxes Department - Sri T.Rajasekhar, former Assistant Commissioner (CT) LTU, Punjagutta, O/o. Deputy Commissioner (CT) Punjagutta, presently working as Joint Commissioner(ST), Vijayawada Division, Andhra Pradesh - Allegation of irregularities in assessing to refund of taxes in respect of M/s. Variegate Projects (P) Ltd., Hyderabad- Departmental proceedings under Rule 20 of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991- Articles of Charges - Issued.

REVENUE (VIGILANCE-II) DEPARTMENT

G.O.Rt.No.605 **Dated:28.07.2020.**
Read:-

G.O.Ms.No.208, Rev (Vig.II) Dept., dt.28-07-2020.

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O R D E R :-

It is proposed to hold an Inquiry against Sri T. Rajasekhar, former Assistant Commissioner (Commercial Taxes) LTU, Punjagutta, O/o Deputy Commissioner (Commercial Taxes) Punjagutta, presently working as Joint Commissioner (State Tax), Vijayawada Division, Andhra Pradesh in accordance with the procedure laid down in Rule-20 of the A.P. Civil Services (Classification, Control & Appeal) Rules, 1991.

2. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). A statement of imputations of misconduct or mis-behaviour in support of the article is also enclosed in Annexure-II. A list of documents by which, and a list of witnesses- by whom the articles of charges are proposed to be substantiated are enclosed in Annexure-III and IV.

3. Sri T.Rajasekhar, former Assistant Commissioner (Commercial Tax) LTU, Punjagutta, O/o Deputy Commissioner (Commercial Tax) Punjagutta, presently working as Joint Commissioner (State Tax), Vijayawada Division, Andhra Pradesh is directed to submit his explanation within 10 days from the date of receipt of this order.

4. Sri T. Rajasekhar, former Assistant Commissioner (Commercial Tax) LTU, Punjagutta, O/o Deputy Commissioner (Commercial Tax) Punjagutta, presently working as Joint Commissioner (State Tax), Vijayawada Division, Andhra Pradesh is informed that an inquiry will be held only in respect of those articles of charges which are not admitted. He should, therefore, specifically admit or deny each article of charge.

5. Sri T.Rajasekhar, former Assistant Commissioner (Commercial Tax) LTU, Punjagutta, O/o Deputy Commissioner (Commercial Tax) Punjagutta, presently working as Joint Commissioner (State Tax), Vijayawada Division, Andhra Pradesh is further informed that if he does not submit his written statement of defence on or before the time specified in para-3 above, further action will be processed based on the material available.

6. Attention of Sri T.Rajasekhar, former Assistant Commissioner (Commercial Tax) LTU, Punjagutta, O/o Deputy Commissioner (Commercial Tax) Punjagutta, presently working as Joint Commissioner (State Tax), Vijayawada Division, Andhra Pradesh is invited to Rule-24 of Andhra Pradesh Civil Services (Conduct) Rules, 1964 under which no Government Servant shall

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bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Sri T.Rajasekhar, former Assistant Commissioner (Commercial Tax) LTU, Punjagutta, O/o Deputy Commissioner (Commercial Tax) Punjagutta, presently working as Joint Commissioner (State Tax), Vijayawada Division, Andhra Pradesh is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule-20 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964.

7. The receipt of this G.O. must be acknowledged.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
Sri T.Rajasekhar, former Assistant Commissioner (CT) Punjagutta, O/o.the Deputy Commissioner(CT), Punjagutta, presently working as Joint Commissioner(ST), Vijayawada Division, Andhra Pradesh.
The Chief Commissioner of State Tax, Andhra Pradesh, Vijayawada. (with a request to cause service of the Charge Memo on the individual and send the served copy to Government.)

Copy to:
The Commissioner of Commercial Taxes, Telangana,Hyderabad.
The Director General, Vigilance & Enforcement, BRKR Bhavan, Hyderabad.
The Secretary to Vigilance Commissioner, Telangana State Vigilance Commission, Hyderabad.
The Secretary to Vigilance Commissioner, APVC, Velagapudl, Amaravathi, A.P.
The Revenue(Vig.)Department, Telangana Secretariat, Hyderabad.
Sf/Sc.

//FORWARDED:: BY ORDER//

SECTION OFFICER

ANNEXURE-I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SRI T.RAJASHEKAR, FORMER ASSISTANT COMMISSIONER (CT) LTU, PUNJAGUTTA, O/o DEPUTY COMMISSIONER (CT), PUNJAGUTTA PRESENTLY WORKING AS JOINT COMMISSIONER (ST), VIJAYAWADA DIVISION, ANDHRA PRADESH.

ARTICLE OF CHARGE:

Sri T.Rajasekhar, while working as Asst.Commissioner(CT), Panjagutta O/o. the Deputy Commissioner(CT), Punjagutta Division committed grave irregularities in Assessing to Refund of taxes to a tune of Rs.3,98,32,460/- for the period 2007-08 & 2008-09 in respect of M/s Variegate Projects (P) Ltd., Hyderabad, in violation of the existing provisions of the Act. He while Assessing the case did not considered the provisions of the A.P. VAT Act and Rules Sec. 22(3-A), Rule 18 (3)(b), Sec.57 and other relevant provisions of the A.P.VAT Act and also orders issued in G.O.Ms.No.94, Irrigation and CAD (PW-COD) Department dt.01-07-2003, CCT's circular instructions issued in No. AIII(1)/150/2012, dt. 26.03.2013 and CCT Ref. No.BVI(1)/76/2007 dt.04-06-2008 Thus, he failed to exercise due diligence in assessing the refund of Tax. It is a clear case of dereliction of duty, willful negligence and criminal misconduct on the part of the said officer.

Sri T.Rajasekhar, former Asst. Commissioner (CT) Punjagutta, O/o. Deputy Commissioner (CT) Punjagutta, presently working as Joint Commissioner (ST), Vijayawada Division, Andhra Pradesh, by his above mentioned acts has exhibited indiscipline lack of integrity and devotion to duty, unbecoming of a Government Servant and thereby contravened Rule 3 (1) (2) & (4) of A.P.C.S. (Conduct) Rules 1964.

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED:: BY ORDER//

SECTION OFFICER

ANNEXURE – II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLE OF CHARGE FRAMED AGAINST SRI T.RAJASHEKAR, FORMER ASSISTANT COMMISSIONER (CT) LTU, PUNJAGUTTA, O/o. DEPUTY COMMISSIONER (CT) PUNJAGUTTA PRESENTLY WORKING AS JOINT COMMISSIONER (ST), VIJAYAWADA DIVISION, ANDHRA PRADESH.

On the allegations of illegal assessment for refund of taxes in respect of M/s. Variegate Projects (P) Ltd., Hyderabad, the V&E Dept., has conducted an enquiry. It reveals that the amount of tax collected at source (TCS), which was added separately over and above the consideration for the execution of work, payable by the contractee, was unlawfully refunded for the following reasons:

1) M/s.Variegate Projects (P) Ltd., Hyderabad, the contractor is a Government contractor and the Government being a Taxing and Collecting Authority and also being a contractee, made a provision for works contract Tax separately to the estimates while awarding works to the contractors so that such Tax which was added to the estimates is collected VAT at the time of making payments to the contractor. This is known as Tax collection at source (TCS). Since it is an exclusive provision for works contract awarded by the Government, necessary statutes were also inserted in the APVAT Act and Rules and it shall neither be refunded nor adjusted against the future liabilities of the contractors.

2) Sri T. Rajasekhar, former Asst. Commissioner(CT), has stated that the dealer contractor has executed works contracts under composition and non-composition to APTRANSCO, APSPDCL, APEPDCL, APNPDCL, APCPDCL which are stated to be neither State Government Department nor Local Authorities and also referred the advance ruling in M/s Sree Balaji Engineers and Contractors, Hyderabad that undertakings like APGENCO Ltd., do not fall under Government or Local Authorities as specified in sub-section 7(b) of section 4 to the Act. But the fact is otherwise. In the Memorandum and Articles of Association of transmission Corporation of India, it is clearly stated at item No.(23) of Main objects that it would act as an entrepreneur on behalf of the Central or any State Government, to identify new areas of economic investments and to undertake or help in undertaking of such investments.

Further, the subscribers to the Memorandum and Articles of Association have been nominated by the Government of Andhra Pradesh vide G.O.No.95, dt.06-11-1998. The above objects empower the corporations of the Government of Andhra Pradesh to carry on the business. As seen from the details, all the Directors are drawn from the Government and the entire paid up share capital of the company is held by the Government of Andhra Pradesh.

Therefore, in clear terms it should be inferred that APGENCO & TRANSCO are Government rum Corporations and public money is used to run the business.

The version of the officer that AP TRANSCO, APSPDCL, APNPDCL, APCPDCL are neither state Govt. nor local authorities is not correct in view of the fact they are very much Government run corporations.

3) The officer stated that Rule 18(3)(b) has been added by G.O.Ms.No.503 (Rev) Dated 08-D5-2009 w.e.f. 01-05-2009 and the assessments in question relates to the period of 2007-08 and 2008-09 w.e.f.01-05-2009 when sub rule (3) was not on the statute book and the excess credit arrived is out of purview of Section 22(3)(A) and Rule 18(3)(b). Even earlier to the years of assessments

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mentioned above, Rule 17 (2)(k) of A.P.VAT Rules, then in force, stipulated that in case of contractor who executes works to State Government & Local Authority and where any tax has been collected at source by the State Government & Local Authority under sub section (3) of 22, NO REFUND OF SUCH TAX COLLECTED SHALL BE ALLOWED TO THE CONTRACTOR. Thus it is established that the APGENCO is a Government organization which awarded contract to the contractor after earmarking tax amount in the estimates prepared for the project. The estimates obtained from the APTRACSCO and APGENCO rev eats the fact that tax was added in the estimates.

He stated that all taxes such as Sales tax, Works contract, VAT, Octroi, Royalties etc., in respect of material to be consumed on the work and also on the finished item of works etc., shall be borne by the contractor himself which means that the contractor was given the tax amount in order to discharge that tax liability. The contractor was given amount, including tax for the purchase of the material to be consumed in the wark which given clear inference, that the contractor purchases the material with the Government money. But by no stretch of imagination, the contractor would be the owner of money used to purchase material that is consumed in the contract work. The contractor is only an entity who does work for profit for which he is entitled. He is not expected to be unduly enriched by whatsoever means.

This argument that excess credit arrived is out of purview of Sec.22(3-A) and Rule 18(3)(b) do not hold good as Rule 17(2)(k) of AP VAT Rules clearly stipulates that no refund of tax shall be allowed to contractor who execute works to State Government and local authority and where any tax has been collected at source by the State Govt., and local authority of Sub Section 3 of Sec.22 of the AP VAT Act, 2005.

4) He stated that whatever the amount refunded was not even the TDS but tax suffered goods purchased locally taxable @ 12.5% which offsets the tax liability @ 4% in respect of works contracts executed to the APGENCO / TRANSCO / DISCOMS as per the entry 116 in the IV schedule to the Act. But the fact is that the Government has provided tax on the goods that were purchased locally for the consumption of such goods in the works contracts executed to the APGENCO / TRANSCO / DISCOMS and when the Government provided tax for the goods the statement of the officer that the contractor is entitled to ITC is not tenable.

5) When it is established that APGENCO/TRANSCO is Government and the contractor is not entitled for refund of ITC, the statement the officer that no irregularity is committed is far from convincing that he has not committed' any irregularity.

The statement of the officer that no irregularity has been committed is wrong. As the refund of Input Tax Credit to the works contractor has resulted in unjust enrichment to the Works Contractor at the cost of the Government.

Thus, by the above mentioned Acts, Sri T.Rajasekhar, former Asst. Commissioner (CT) presently working as Joint Commissioner (ST), Vijayawada Division, Andhra Pradesh, has showed gross negligence while doing his official duty caused loss of revenue to the State exchequer, and in not obeying the Government orders and as well as instructions of the higher authorities and contravened Rule 3 of the A.P.C.S. (Conduct) Rules, 1964.

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED:: BY ORDER//

SECTION OFFICER

ANNEXURE – III

LIST OF DOCUMENTS BY WHICH ARTICLE OF CHARGE FRAMED AGAINST SRI T.RAJASHEKAR, FORMER ASSISTANT COMMISSIONER (CT) LTU, PUNJAGUTTA, O/o. DEPUTY COMMISSIONER (CT), PUNJAGUTTA PRESENTLY WORKING AS JOINT COMMISSIONER (ST), VIJAYAWADA DIVISION, ANDHRA PRADESH ARE PROPOSED TO BE SUSTAINED:

1. Vigilance Report No. 41(C.No.98/V&E/R1/2014), Dt.26.3.2014.
2. Copy of G.O.Ms.No.11, dt.29-07-2005.
3. Copy of G.O. No. 94, dt. 01-07-2003.
4. Copy of Circular of Commissioner (CT) in ref. No. AIII(1)/150/2012, dt. 26-03-2013.
5. Copy of CCT's Ref. No. BV(I)/76/2007, dt. 04-06-2008.

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED:: BY ORDER//

SECTION OFFICER

ANNEXURE – IV

LIST OF WITNESSES BY WHOM ARTICLE OF CHARGES FRAMED AGAINST SRI T.RAJASHEKAR, FORMER ASSISTANT COMMISSIONER (CT) LTU, PUNJAGUTTA, O/o DEPUTY COMMISSIONER (CT) PUNJAGUTTA PRESENTLY WORKING AS JOINT COMMISSIONER (ST), VIJAYAWADA DIVISION, ANDHRA PRADESH ARE PROPOSED TO BE SUSTAINED:

-NIL -

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED:: BY ORDER//

SECTION OFFICER